economist and a physician. He is a member of the President's Council of Economic Advisers and he is also a major advisor on health policy to the President today. He was an associate professor of economics and medicine at Stanford University. He also served as deputy assistant secretary in the Department of Treasury. And, best of all, he received his medical degree, his doctorate in economics, and his master's degree in public health at Harvard and MIT.

This nomination to a major public health position is long overdue. Dr. McClellan has the training, the experience, and the stature to serve as the head of the country's most important public health regulatory agency—an agency that serves as the gold standard for the rest of the world.

FDA's mission is to protect the public health. Its mission affects more than a quarter of every dollar spent in the U.S. economy. The products that it regulates—food, drugs, biologics, devices supplements and cosmetics—affect public health and safety every day.

The agency also has a long and distinguished history of serving the public interest. It has a proud tradition of promoting the public interest ahead of special interests. It is an agency of skilled professionals who set high standards and demand excellence from the industries it regulates.

In this time of extraordinary medical breakthroughs and as new threats to public health arise, the FDA faces enormous challenges. The American people increasingly depend on the FDA to safeguard public health. Now is not the time for FDA to retreat from these challenges, or surrender its authority over public health.

Dr. McClellan has been nominated to a position of great responsibility. I believe he will make a fine commissioner, one who will help lead the agency into the 21st century.

PROTOCOL RELATING TO THE MADRID AGREEMENT—TREATY DOCUMENT NO. 106–41

Mr. REID. I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar No. 1, the protocol relating to the Madrid agreement; that the protocol be considered as having advanced through its parliamentary stages up to and including the presentation of the resolution for ratification, and that the understandings, declarations and conditions be agreed to, and that the Senate now vote on the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the resolution.

All those in favor of the resolution will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

In the opinion of the Chair, two-thirds of the Senators present and having voted in the affirmative, the resolution is agreed to.

The resolution of ratification read as follows:

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO ACCESSION TO THE MADRID PROTOCOL, SUBJECT TO AN UNDERSTANDING, DECLARATIONS, AND CONDITIONS.

The Senate advises and consents to the accession by the United States to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on June 27, 1989, entered into force on December 1, 1995 (Treaty Doc. 106–41; in this resolution referred to as the ''Protocol''), subject to the understanding in section 2, the declarations in section 3, and the conditions in section 4.

SEC. 2. UNDERSTANDING.

The advice and consent of the Senate under section 1 is subject to the understanding, which shall be included in the United States instrument of accession to the Protocol, that no secretariat is established by the Protocol and that nothing in the Protocol obligates the United States to appropriate funds for the purpose of establishing a permanent secretariat at any time.

SEC. 3. DECLARATIONS.

The advice and consent of the Senate under section 1 is subject to the following declarations:

(1) NOT SELF-EXECUTING.—The United States declares that the Protocol is not self-executing.

(2) TIME LIMIT FOR REFUSAL NOTIFICATION.—Pursuant to Article 5(2)(b) of the Protocol, the United States declares that, for international registrations made under the Protocol, the time limit referred to in subparagraph (a) of Article 5(2) is replaced by 18 months. The declaration in this paragraph shall be included in the United States instrument of accession.

(3) NOTIFYING REFUSAL OF PROTECTION.—Pursuant to Article 5(2)(c) of the Protocol, the United States declares that, when a refusal of protection may result from an opposition to the granting of protection, such refusal may be notified to the International Bureau after the expiry of the 18-month time limit. The declaration in this paragraph shall be included in the United States instrument of accession.

(4) FEES.—Pursuant to Article 8(7)(a) of the Protocol, the United States declares that, in connection with each international registration in which it is mentioned under Article 3ter of the Protocol, and in connection with each renewal of any such international registration, the United States chooses to receive, instead of a share in revenue produced by the supplementary and complementary fees, an individual fee the amount of which shall be the current application or renewal fee charged by the United States Patent and Trademark Office to a domestic applicant or registrant of such a mark. The declaration in this paragraph shall be included in the United States instrument of accession.

SEC. 4. CONDITIONS.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) TREATY INTERPRETATION.—The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

(2) NOTIFICATION OF THE SENATE OF CERTAIN EUROPEAN COMMUNITY VOTES.—The President shall notify the Senate not later than 15 days after any nonconsensus vote of the European Community, its member states, and the United States within the Assembly of the Madrid Union in which the total number of votes cast by the European Community and its member states exceeded the number of member states of the European Community.

Mr. REID. Mr. President, I ask unanimous consent that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. We are in morning business, is that correct?

The PRESIDING OFFICER. The Senator is correct.

U.S. EFFORTS IN POST-CONFLICT IRAQ

Mr. DASCHLE. Mr. President, early last Friday morning, the Senate acted on the President's request to grant him authority to use force in Iraq. I joined with a majority of my colleagues from both sides of the aisle to support the resolution granting that authority, but made clear then and continue to believe now that our vote was the first step in our effort to address the threat posed by Iraq's weapons of mass destruction. In my statement before that vote, I indicated the President faces several challenges as he attempts to fashion a policy that will be successful in our efforts against Saddam Hussein and his weapons of mass destruction.

One of those challenges is preparing for what might happen in Iraq after Saddam Hussein and preparing the American people for what might be required of us on this score. To that end, I was interested to see an article in Friday morning's newspaper with the title, ''U.S. Has a Plan to Occupy Iraq, Officials Report.''

Citing unnamed administration officials, the article contends the administration is modeling plans for the economic and political reconstruction of Iraq on the successful efforts in post-WWII Japan. The article goes on to report that the Administration has yet to endorse a final position and this issue had not been discussed with key American allies. When questioned at a press conference Friday afternoon, the White House spokesperson distanced himself from this specific plan.

If this news account is true, I have no choice but to conclude this administration has much to do before it will be in position to present a plan to the American people and the world about what

it feels is necessary to promote economic and political stability in post-conflict Iraq. We do know, however, that a plan based on the Japan precedent would require a significant and lengthy commitment of American political will, economic resources, and military might.

While I do not doubt either our resolve or capability to be successful in Iraq, it is critical that the Administration be clear with the Congress, the American people, and the world about what it believes will be needed in post-Saddam Iraq, what portion of that it believes America should undertake, and what it believes others should be prepared to do. To this end, I urge the President and his administration to keep in mind the following facts and questions as planning for post-conflict Iraq continues.

General MacArthur and President Truman made a strategic choice in post-WWII Japan to leave intact as much as 95 percent of the imperial Japanese government, including the Emperor himself, because of the fear of what impact a massive upheaval of the government structure would have on stability in Japan. Do the President and his team intend to follow that precedent, or we will start from scratch in constructing post-conflict institutions in Iraq?

We maintained nearly 80,000 troops in Japan for 6 years after V-J Day and still maintain 47,000 troops to this day, more than a half century after the conflict officially ended. How long does the administration anticipate having U.S. forces in post-conflict Iraq, and how much of this burden can we anticipate our friends allies will assume?

Post-WWII Japan represented an ethnically and religiously homogenous population. How does the fact that Iraq is riven by ethnic and religious difference impact U.S. planning for post-conflict Iraq?

From 1946 to 1950, the Congressional Research Service estimates that the United States spent a yearly average of $3 billion, in today's dollars, for the occupation of Japan. Are those the kinds of numbers the President and his team anticipate for political and economic reconstruction in post-conflict Iraq?

If the administration plans on obtaining assistance from others, what nations is it assuming will be willing to help us? What is the administration assuming these other nations are prepared to do and for how long? If no plan is yet in place and no allies briefed, when does the administration believe such discussions should begin?

I ask unanimous consent to print the article in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 11, 2002]

U.S. HAS A PLAN TO OCCUPY IRAQ, OFFICIALS REPORT

(By David E. Sanger and Eric Schmitt)

WASHINGTON.—The White House is developing a detailed plan, modeled on the post-war occupation of Japan, to install an American-led military government in Iraq if the United States topples Saddam Hussein, senior administration officials said today.

The plan also calls for war-crime trials of Iraqi leaders and a transition to an elected civilian government that could take months or years.

In the initial phase, Iraq would be governed by an American military commander—perhaps Gen. Tommy R. Franks, commander of United States forces in the Persian Gulf, or one of his subordinates—who would assume the role that Gen. Douglas MacArthur served in Japan after its surrender in 1945.

One senior official said the administration was ''coalescing around'' the concept after discussions of options with President Bush and his top aides. But this official and others cautioned that there had not yet been any formal approval of the plan and that it was not clear whether allies had been consulted on it.

The detailed thinking about an American occupation emerges as the administration negotiates a compromise at the United Nations that officials say may fall short of an explicit authorization to use force but still allow the United States to claim it has all the authority it needs to force Iraq to disarm.

In contemplating an occupation, the administration is scaling back the initial role for Iraqi opposition forces in a post-Hussein government. Until now it had been assumed that Iraqi dissidents both inside and outside the country would form a government, but it was never clear when they would take full control.

Today marked the first time the administration has discussed what could be a lengthy occupation by coalition forces, led by the United States.

Officials say they want to avoid the chaos and in-fighting that have plagued Afghanistan since the defeat of the Taliban. Mr. Bush's aides say they also want full control over Iraq while American-led forces carry out their principal mission: finding and destroying weapons of mass destruction.

The description of the emerging American plan and the possibility of war-crime trials of Iraqi leaders could be part of an administration effort to warn Iraq's generals of an unpleasant future if they continue to support Mr. Hussein.

Asked what would happen if American pressure prompted a coup against Mr. Hussein, a senior official said, ''That would be nice.'' But the official suggested that the American military might enter and secure the country anyway, not only to eliminate weapons of mass destruction but also to ensure against anarchy.

Under the compromise now under discussion with France, Russia and China, according to officials familiar with the talks, the United Nations Security Council would approve a resolution requiring the disarmament of Iraq and specifying ''consequences'' that Iraq would suffer for defiance.

It would stop well short of the explicit authorization to enforce the resolution that Mr. Bush has sought. But the diplomatic strategy, now being discussed in Washington, Paris and Moscow, would allow Mr. Bush to claim that the resolution gives the United States all the authority he believes he needs to force Baghdad to disarm.

Other Security Council members could offer their own, less muscular interpretations, and they would be free to draft a second resolution, authorizing the use of force, if Iraq frustrated the inspection process. The United States would regard that second resolution as unnecessary, senior officials say.

''Everyone would read this resolution their own way,'' one senior official said.

The revelation of the occupation plan marks the first time the administration has described in detail how it would administer Iraq in the days and weeks after an invasion, and how it would keep the country unified while searching for weapons.

It would put an American officer in charge of Iraq for a year or more while the United States and its allies searched for weapons and maintained Iraq's oil fields.

For as long as the coalition partners administered Iraq, they would essentially control the second largest proven reserves of oil in the world, nearly 11 percent of the total. A senior administration official said the United Nations oil-for-food program would be expanded to help finance stabilization and reconstruction.

Administration officials said they were moving away from the model used in Afghanistan: establishing a provisional government right away that would be run by Iraqis. Some top Pentagon officials support this approach, but the State Department, the Central Intelligence Agency and, ultimately, the White House, were cool to it.

''We're just not sure what influence groups on the outside would have on the inside,'' an administration official said. ''There would also be differences among Iraqis, and we don't want chaos and anarchy in the early process.''

Instead, officials said, the administration is studying the military occupations of Japan and Germany. But they stressed a commitment to keeping Drag unified, as Japan was, and avoiding the kind of partition that Germany underwent when Soviet troops stayed in the eastern sector, which set the stage for the cold war. The military government in Germany stayed in power for four years; in Japan it lasted six and a half years.

In a speech on Saturday, Zalmay Khalilzad, the special assistant to the president for Near East, Southwest Asian and North African affairs, said, ''The coalition will assume—and the preferred option—responsibility for the territorial defense and security of Iraq after liberation.''

''Our intent is not conquest and occupation of Iraq,'' Mr. Khalilzad said. ''But we do what needs to be done to achieve the disarmament mission and to get Iraq ready for a democratic transition and then through democracy over time.''

Iraqis, perhaps through a consultative council, would assist an American-led military and, later, a civilian administration, a senior official said today. Only after this transition would the American-led government hand power to Iraqis.

He said that the Iraqi armed forces would be ''downsized,'' and that senior Baath Party officials who control government ministries would be removed. ''Much of the bureaucracy would carry on under new management,'' he added.

Some experts warned during Senate hearings last month that a prolonged American military occupation of Iraq could inflame tensions in the Mideast and the Muslim world.

''I am viscerally opposed to a prolonged occupation of a Muslim country at the heart of the Muslim world by Western nations who proclaim the right to re-educate that country,'' said the former secretary of state, Henry A. Kissinger, who as a young man served as district administrator in the military government of occupied Germany.

While the White House considers its long-term plans for Iraq, Britain's prime minister, Tony Blair, arrived in Moscow this evening for a day and a half of talks with President Vladimir V. Putin. Aides said talks were focused on resolving the dispute at the United Nations. Mr. Blair and Mr. Putin are to hold

formal discussions on Friday, followed by a news conference.

Mr. Blair has been a steadfast supporter of the administration's tough line on a new resolution. But he has also indicated that Britain would consider France's proposal to have a two-tiered approach, with the Security Council first adopting a resolution to compel Iraq to cooperate with international weapons inspectors, and then, if Iraq failed to comply, adopting a second resolution on military force. Earlier this week, Russia indicated that it, too, was prepared to consider the French position.

But the administration is now saying that if there is a two-resolution approach, it will insist that the first resolution provide Mr. Bush all the authority he needs.

''The timing of all this is impossible to anticipate,'' one administration official involved in the talks said. ''The president doesn't want to have to wait around for a second resolution if it is clear that the Iraqis are not cooperating.''

EXPRESSING SYMPATHY FOR THE PEOPLE OF AUSTRALIA

Mr. LOTT. Mr. President, the people of the United States were shocked and saddened to learn of the cold blooded and cowardly attack on hundreds of Australian tourists vacationing on the island of Bali, on October 12. In a few shocking seconds our friends lost more of their fellow Australians than at any time since the darkest days of World War II.

Although Australia is at the farthest corner of the earth, America has no greater friend or ally. Just this year Prime Minister John Howard addressed a joint session of the United States Congress to celebrate the 50th Anniversary of the signing ANZUS Treaty, the document that has formally tied our strategic destinies together for the Food of the entire Asian Pacific Rim.

But our relationship with Australia did not begin with the ratification of one treaty. American and Australian soldiers have fought together on every battlefield of the world from the Meuse Argonne in 1918 to the Mekong Delta and Desert Storm. In all of our major wars there has been one constant, Americans and Australians have been the vanguard of freedom. In fact when American troops launched their first combined assault on German lines in World War I, it was under the guidance of the legendary Australian fighter General John Monash. We share a common historic and cultural heritage. We are immigrant peoples forged from the British Empire. We conquered our continents and became a beacon of hope for people struggling to be free.

For over 100 years, the United States and Australia have been the foundation for stability in the South Pacific. When America suffered its worse loss of life since December 7, 1941, the first nation to offer a helping hand was Australia. The day after the attacks on Washington and New York, Australia invoked the mutual defense clause of the ANZUS Treaty. They were the first to offer military support. Australian special forces are in Afghanistan and after Great Britain have made the largest per capita contribution to our efforts there. In the fight to break the back of al-Quaeda and the Taliban, Australian troops scaled the mountains around Tora Bora.

Mr. President, we received another wake-up call on October 12. We can no longer let the nay sayers and the hand wringers counsel timidity have their way. The free world is clearly in the sights of fanatics who want to plunge us into a new dark age. Whether it be Saddam Hussein, Osama bin Laden, or the coward who attacked men, women, and children on holiday in Bali, they are part of the same threat to free peoples.

We send our heartfelt condolences to the people of Australia and pledge to stand with them in their fight for peace and freedom.

PRESIDENTIAL ABILITY TO LAUNCH AN ATTACK

Mr. BYRD. Mr. President, I would like to take this opportunity to submit for the RECORD two very thoughtful and well-researched documents submitted to me by renowned constitutional scholars with respect to the President's ability to launch an unprovoked military attack against a sovereign state.

Earlier this year, I wrote to a number of constitutional scholars advising them that I was concerned about reports that our Nation was coming closer to war with Iraq. I asked a number of esteemed academics their opinion as to whether they believed that the Bush Administration had the authority, consistent with the U.S. Constitution, to introduce U.S. Armed Forces into Iraq to remove Saddam Hussein from power.

All of the scholars I consulted responded by stating that, under current circumstances, the President did not have such authority. I have previously submitted for the RECORD the responses of professors Michael Glennon of Tufts, and Jane Stromseth of Georgetown University Law Center.

Now, I would like to submit two additional responses I received on this same subject from professors Laurence Tribe of Harvard Law School and William Van Alstyne of the Duke University School of Law. I found the depth and breadth of their scholarship on this subject to be extremely impressive and, for this reason, I ask unanimous consent that their responses to me be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DUKE UNIVERSITY,
SCHOOL OF LAW,
Durham, NC., August 7, 2002.

Senator ROBERT C. BYRD,
Chairman, U.S. Senate
Committee on Appropriations,
Washington, DC

DEAR SENATOR BYRD: I am writing in response to your letter of July 22 inquiring whether in my opinion, ''the Bush Administration currently has authority, consistent with the U.S. Constitution and the War Powers Resolution, to introduce U.S. Armed Forces into imminent or actual hostilities in Iraq for the purpose of removing Saddam Hussein from Power.'' You raise the question because, as you say, in your letter, you are ''deeply concerned about comments by the Bush Administration and recent press reports that our nation is coming closer to war with Iraq.''

I was away from my office at Duke University During the week when your inquiry arrived. Because you understandably asked for a very prompt response, I am foregoing a fuller, more detailed, statement to you just now, the day just following my reading of your letter, on August 6. I shall, however, be pleased to furnish that more elaborate statement on request. Briefly, these are my views:

A. The President may not engage our armed forces in ''war with Iraq,'' except in such measure as Congress, by joint or concurrent resolutions duly passed in both Houses of Congress, declares shall be undertaken by the President as Commander in Chief of the Armed Forces. As Commander in Chief, i.e., in fulfilling that role, the President is solely responsible for the conduct of whatever measures of war Congress shall authorize. It is not for the President, however, to presume to ''authorize himself'' to embark on war.

Whether the President deems it essential to the National interest to use the armed forces of the United States to make war against one of our neighbors, or to make war against nations yet more distant from our shores, it is all the same. The Constitution requires that he not presumed to do so merely on his own assessment and unilateral order. Rather, any armed invasions of or actual attack on another nation by the armed forces of the United States as an act of war requires decision by Congress before it proceeds, not after the President would presume to engage in war (and, having unilaterally commenced hostilities, then would merely confront Congress with a ''take-it-or-leave it'' fait accomplis). The framers of the Constitution understood the difference vividly—and made provision against vesting any war-initiating power in the Executive.[1]

B. Nor does the form of government of—or any policy currently pursued by—an identified foreign nation affect this matter, although either its form of government or the policies it pursues may of course bear substantially on the decision as shall be made by Congress. Whether, for example, the current form of government of Iraq is so dangerous that no recourse to measures short of direct United States military assault to ''remove'' that government (a clear act of war) now seem sufficient to meet the security needs either of the United States or of other states with which we associate our vital interests, may well be a fair question. That is a fair question, however, is merely what therefore also makes it right for Congress to debate that question.

Indeed, it appears even now that Congress is engaged in that debate. And far from feeling it must labor under any sense of apology

[1] It is today, even as it was when Thomas Jefferson wrote to James Madison from Paris, in September, 1789, referring then to the constitutional clauses putting the responsibility and power to embark on war in Congress rather than in the Executive. And thus Jefferson observed: ''We have given, in example, one effectual check to the dog of war, by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.'' C. Warren, The Making of the Constitution 481 n. 1 (1928). (See also Chief Justice Johnson Marshall's Opinion for the Supreme Court in Talbot v. Seeman, 5 U.S. (1 Cranch) 1,28 (1803) (''The whole powers of war being, by the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides.'')